NO. FBT CV 15 6048103 S	**:**	**SUPERIOR COURT**
DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, ET AL	**:**	**J.D. OF FAIRFIELD**
V.	**:**	**AT BRIDGEPORT**
BUSHMASTER FIREARMS INTERNATIONAL, LLC, a/k/a, ET AL	**:**	**FEBRUARY 22, 2016**

PLAINTIFFS' SURREPLY ADDRESSED SOLELY TO THE REMINGTON DEFENDANTS' SELLER ARGUMENT

Each of the defendants raised arguments in their Reply briefs that were not raised in their initial motions. To avoid bombarding the Court with a rebuttal to each of these points immediately before argument, plaintiffs confine this Surreply to one issue only – the Remington Defendants' insistence that they are not a "seller" under PLCAA.

The Remington Defendants make two arguments in support of this contention: (1) that they are not "engaged in the business" of selling firearms as that phrase is defined under federal law; and (2) that PLCAA's legislative history supports their position that they are not a "seller." Plaintiffs respond specifically to these arguments because, following the filing of their Reply, counsel for the Remington Defendants accused plaintiffs' counsel of violating multiple Rules of Professional Conduct by arguing that Remington is a seller under PLCAA, and demanded that plaintiffs immediately withdraw their negligent entrustment claim against them. *See* Email dated February 18, 2016 from Attorney Vogts to Attorney Sterling, attached as Exhibit A. The timing of this accusation is odd, as it comes after fourteen months of litigation and extensive briefing here and in the District Court. It is also utterly unfounded.

(1) The Remington Defendants' assertion that they are not "engaged in the business" of dealing in firearms defies common sense. The Remington Defendants hold a federal dealer's

license. They sell a high volume of firearms for profit. If they are not a seller "engaged in the business" of selling firearms, it is hard to grasp *what* they are doing.

An entity qualifies as a "seller" under PLCAA if it is an "importer" or "dealer" of firearms, or a seller of ammunition. 15 U.S.C. § 7903(6). PLCAA goes on to define "dealer" – in part by incorporating definitions from the federal Gun Control Act – as an entity that holds a dealer's license and is engaged in the business of selling firearms at wholesale or retail. *Id.* at § 7903(6)(B); 18 U.S.C. § 921(a)(11). "Engaged in the business" is defined with reference to 18 U.S.C. § 921(a)(21), which provides that a dealer is

> a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.

Remington insists that, as a manufacturer, they do not engage in the "repetitive purchase and resale of firearms."

Plaintiffs are not required to accept this representation without the benefit of discovery. Remington's 2014 annual report reveals a dizzyingly complex corporate structure[1] involving eleven "Manufacturing Facilities" (each of which has a separate function, including "rifle

[1] *See* Annual Report for Fiscal Year Ending December 31, 2014, at 2 ("Remington Outdoor Company (formerly named American Heritage, Inc. through October 2008 and subsequently Freedom Group, Inc.) is a holding company currently controlled by Cerberus Capital Management ("CCM"). Our predecessor company, Bushmaster Firearms International, LLC, was created on February 17, 2006 by CCM for the purpose of acquiring the business of Bushmaster Firearms, Inc. CCM completed the acquisition of certain assets and assumed certain liabilities of Bushmaster Firearms, Inc. on April 1, 2006. Remington Outdoor Company was formed by CCM for the purpose of acquiring Remington Arms Company, Inc., which occurred on May 31, 2007. Bushmaster Firearms International, LLC and Remington Outdoor Company were merged on December 12, 2007, creating Freedom Group, Inc., which was subsequently renamed Remington Outdoor Company on October 19, 2012."). The pages of this report to which plaintiffs cite are attached as Exhibit B. The entire report is available online at http://www.freedom-group.com/2014%2010-K.pdf.

manufacturing" and "rifle assembly"); seven "Ancillary Facilities" (which include "warehouse and distribution," "research and development" and "office"); and a headquarters that is "utilized for management offices as well as certain sales, marketing, human resources, information technology, finance, treasury, and customer and consumer service functions."[2] This massive operation extends to twelve states and the United Kingdom.[3]

The flow of firearms through this complicated structure may indeed result from repetitive purchases among distinct corporate entities, facilities, or states; according to the annual report, "[t]he Company purchased certain products totaling $ 3.2 [million], $9.8 [million] and $3.3 [million] from other entities affiliated through common ownership in 2014, 2013, and 2012, respectively."[4] Moreover, Remington acknowledges that it utilizes "many raw materials ... *as well as manufactured parts purchased from independent manufacturers.*"[5] Under 18 U.S.C. § 921, the definition of "firearm" includes "the frame or receiver of any such weapon." 18 U.S.C.A. § 921(a)(3); *see also United States v. Hunter*, 101 F.3d 82, 85 (9th Cir. 1996) ("[U]nder 18 U.S.C. § 921(a)(3), the term 'firearm' includes mere parts of a gun which alone are incapable of firing[.]").

As plaintiffs have previously argued, we do not believe it is required for us to explicitly allege that the Remington Defendants are engaged in the business of dealing in firearms in order to proceed on our negligent entrustment claim; rather, that fact may be inferred from plaintiffs' allegations pertaining to the Remington Defendants' sales activities. *See* FAC ¶¶ 171, 172. However, if the Court deems such an allegation appropriate, there is plainly a good faith basis to

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[2] Ex. B at 31.

[3] *Id.*

[4] *Id.* at 98

[5] *Id.* at 22 (emphasis supplied).

do so. (It is, moreover, the Remington Defendants that have for the last year kept the case in a posture where plaintiffs are unable to proceed with discovery.) Certainly, the Court cannot conclude on this record that the Remington Defendants are not "engaged in the business" of dealing in firearms.

Finally, the Remington Defendants fail to mention that courts – including the Second Circuit – have rejected the notion that each element of Section 921(a)(21)(C) must be established to find that a dealer is "engaged in the business." *See United States v. Allah*, 130 F.3d 33, 43 (2d Cir. 1997) (affirming jury charge that defined a firearm dealer "engaged in the business" as a person who "devotes time, attention, or labor to dealing in firearms as a regular course of trade or business for the purpose of a livelihood or profit" and specifically rejecting defendant's argument that the charge was defective because it did not use the exact language of § 921(a)(21)(C)); *United States v. Shan*, 80 F. App'x 31, 31-32 (9th Cir. 2003) ("[Defendant]'s argument rests upon the absence of evidence showing that he profited through the 'repetitive purchase and resale of firearms.' 18 U.S.C. § 921(a)(21)(C). Nevertheless, this Court has previously held that if a person has guns on hand or is ready and able to procure them, that person is engaged in the business of dealing in firearms.") (quotation marks and citation omitted). Thus, the Remington Defendants appear to be "engaged in the business" under Section 921(a)(21)(C) *regardless* of the outcome of discovery on "repetitive purchase and resale."

(2) The Remington Defendants' new reliance on legislative history to interpret the meaning of "seller" must also be rejected. *See* Reply at 12-13. PLCAA's legislative history is notoriously unreliable, and the self-serving excerpts quoted in the Remington Defendants' Reply are not a fair or accurate guide to construing these subsections. Indeed, Senator Craig, whose statement the Remington Defendants rely on to "resolve[] any ambiguity" in the meaning of

seller, is a perfect example of such unreliability. In the course of debate, the Senator also said the exact opposite of what Remington would like this Court to believe:

> We have also tried to make the narrow scope of the bill clear by listing specific kinds of lawsuits that are **not** prohibited. Section 4 says they include: actions for harm resulting from defects in the firearm itself when used as intended—that is product liability suits—**actions based on the negligence or negligent entrustment by the gun manufacturer**, seller, or trade association; actions for breach of contract by those parties."

150 Cong Rec S1861 (Sen. Craig) (emphasis supplied). Other Congressional supporters of PLCAA expressed similar views. *See* 151 Cong Rec S9063 (Sen. Coburn) ("Firearms and ammunition manufacturers or sellers may be held liable for negligent entrustment or negligence per se[.]"). PLCAA's legislative history is replete with wildly divergent characterizations of the proposed law. To give just one example, the bill's proponents described it in the most vanilla of terms, while its opponents foretold a sea change.[6]

It appears that Attorney Vogts, *pro hac vice* counsel for the Remington Defendants, would at least on occasion agree with plaintiffs' view of PLCAA's legislative history. Attorney Vogts – in briefing in the recent *Badger v. Norberg* case in Wisconsin – chastised the plaintiffs for "selectively cit[ing] to statements made on the floor of the Senate during debate on passage of the PLCAA" because "statements made by individual members of Congress have no value in interpreting the intent of Congress as a whole." *See* Reply in Support of Motion for Summary Judgment, attached in excerpted form as Exhibit C, at 12. The brief highlights several inconsistent statements made during debate, concluding that "[t]hese statements and others

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[6] *E.g.*, *compare* 151 Cong. Rec. S9094 (statement of Sen. Sessions) ("That is what we are trying to do here, to pass some legislation that does nothing more than restore the classical understanding of American civil liability."), *with* 151 Cong. Rec. S9081 (statement of Sen. Durbin) ("They are changing the law. They are saying, for firearms dealers, we are not going to hold them to this same standard that we hold every other business in America to when people buy products.").

demonstrate the futility of looking to the Senate floor debates for evidence of what Congress as a whole sought to accomplish through the PLCAA." *Id.* at 13. Indeed, "'[c]herry-picking favorable snippets of legislative history to establish the meaning of subsequently enacted legislation is an enterprise rife with the potential for mischief and abuse.'" *Id.* at 12 (quoting *In re Visteon Corporation*, 612 F.3d 210, 228 (3d. Cir. 2010)).

For these reasons, the Court should reject the Remington Defendants' argument that they are not a seller within the meaning of PLCAA.

THE PLAINTIFFS,

By **/s/ Joshua D. Koskoff**

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CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, postage prepaid, and emailed this day to all counsel of record, to wit:

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/s/ Joshua D. Koskoff

JOSHUA D. KOSKOFF
ALINOR C. STERLING
KATHERINE MESNER-HAGE

EXHIBIT A

Alinor C. Sterling

From: James Vogts <jvogts@smbtrials.com>
Sent: Thursday, February 18, 2016 12:37 PM
To: Alinor C. Sterling
Cc: Scott Harrington; Jon Whitcomb
Subject: Soto v. Remington

Alinor, this confirms our conversation in which we discussed whether you and your colleagues will withdraw your argument that the Remington Defendants were a "seller" of the firearm, as the term is defined in the PLCAA. You indicated that you were not prepared to do so at the present time.

As you know, to be a "seller" under the PLCAA, one must qualify under relevant provisions of the Gun Control Act as a "dealer" who is "engaged in the business" of "dealing in firearms ... through the repetitive purchase and resale of firearms" at wholesale or retail. The Remington Defendants did not "purchase" the firearm it sold to Camfour, and its role with respect to the firearm was therefore not that of a "seller." The technical meanings given to these terms and phrases in the statutes are clear. There is no basis to argue to the contrary.

In our view, your argument was initially in violation of Rule of Professional Conduct 3.1, prohibiting an attorney from asserting or controverting an issue unless there is a basis in law and fact for doing so. *See Schoonmaker v. Brunoli*, 265 Conn. 210, 255 (2003) (the standard in determining whether a claim is frivolous under Rule 3.1 is objective: whether a reasonable attorney could have concluded that facts supporting the claim might be established). Failure to withdraw the argument would in our view be in violation of Rule 3.3, requiring an attorney to correct a false statement of material fact or law and to disclose authority to the court that is known to be directly adverse to the position of the client.

If you change your position on this matter, please let me know.

Jim

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EXHIBIT B

ANNUAL REPORT

For the fiscal year-ended:

December 31, 2014

REMINGTON OUTDOOR COMPANY, INC.

(Exact name of company as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)
870 Remington Drive
P.O. Box 1776
Madison, North Carolina 27025-1776
(Address of principal executive offices) (Zip Code)

(336) 548-8700
(Company's telephone number, including area code)

The aggregate commercial firearms, ammunition and accessories markets in the United States were approximately $14 billion in 2013. As a result of favorable industry-wide trends, including broader participation in hunting and shooting sports, an increasing number of female shooters, an increased focus on home and self-defense and recent rises in demand brought about by regulatory and legislative concerns, our markets have expanded over the past five years.

We believe our scale and product breadth are unmatched within our industry, with approximately 1.2 million firearms and 2.8 billion rounds of ammunition sold during the year ended December 31, 2014, and approximately 1.8 million firearms and 3.1 billion rounds of ammunition sold during the year ended December 31, 2013. We are one of only two major U.S. companies that manufacturers both firearms and ammunition, which we believe provides a competitive advantage, supports our market leadership position and adds a recurring revenue component to our sales. We also believe that our portfolio of products is more diverse and expansive than those of other manufacturers of both firearms and ammunition based on the number of product categories in which we participate.

Our Defense Division has been an active participant in the Law Enforcement, International Military, and U.S. Federal and Military markets for ammunition, shotgun, carbine, sniper rifle, and suppressor categories in 2014. We are one of the market leaders in the military sniper rifle and law enforcement shotgun markets and a major provider of service and training ammunition. Remington Defense is a sniper rifle vendor of choice for the U.S. Military as we provide the U.S. Army the M2010 Sniper Rifle and SOCOM the Precision Sniper Rifle (PSR). The PSR, awarded to Remington Defense in 2013, provides SOCOM with a total sniper rifle solution including rifle, suppressor, ammunition and parts. This has helped to establish Remington Defense as a market leader in the sniper rifle space. Additionally, our work in shaping international requirements over the last 5 years resulted in an approximate $47.0 million carbine contract with the Republic of the Philippines that will support this U.S. ally in domestic and regional security operations. We believe that our commitment to researching and developing creative new products with end user input, along with our commitment to providing the highest quality firearm solutions available for law enforcement and military customers provides an opportunity for attractive revenue diversification while reinforcing the strength of our brands with consumers.

We believe we can substantially improve our quality and cost position by improving machinery and equipment in our manufacturing process and by leveraging new technologies. To that end, in 2014 we invested $74.3 million in capital equipment and new product innovation.

We currently manufacture our products in 11 primary facilities with an aggregate 3.1 million square feet of manufacturing space, enabling us to deliver our products in the U.S. and globally to over 60 countries. Nearly 80% of our revenue in 2014 was derived from two key firearms facilities in Ilion, New York and Mayfield, Kentucky and our primary ammunition plant in Lonoke, Arkansas. We are continuously evaluating options to expand our domestic manufacturing capacity while simultaneously implementing production best practices to drive margin improvement within our existing facilities. In 2014, we undertook an approximately $30 million expansion in operations at our ammunition facility in Lonoke, Arkansas, which came online in late 2014. In addition, in March 2014, we completed the acquisition of a facility in Huntsville, Alabama. We believe this facility will allow us to consolidate our firearm manufacturing capacity and expand our research and development capabilities. Initial production at our Huntsville facility began in late 2014 and we anticipate being fully up and running in the fall of 2015. We are continuing to make improvements at this facility, including the creation of a new shooting range and state of the art research and development facility, in addition to the installation of equipment in order to ramp up production.

Our History and Corporate Structure

We have nearly 200 years of operational history in firearms, ammunition and related products. Remington Outdoor Company (formerly named American Heritage, Inc. through October 2008 and subsequently Freedom Group, Inc.) is a holding company currently controlled by Cerberus Capital Management ("CCM"). Our predecessor company, Bushmaster Firearms International, LLC, was created on February 17, 2006 by CCM for the purpose of acquiring the business of Bushmaster Firearms, Inc. CCM completed the acquisition of certain assets and assumed certain liabilities of Bushmaster Firearms, Inc. on April 1, 2006. Remington Outdoor Company was formed by CCM for the purpose of acquiring Remington Arms Company, Inc., which occurred on May 31, 2007. Bushmaster Firearms International, LLC and Remington Outdoor Company were merged on December 12, 2007, creating Freedom Group, Inc., which was subsequently renamed Remington Outdoor Company on October 19, 2012.

purchases of firearms and/or ammunition from us, our financial condition, results of operations or cash flows, could be adversely affected.

We are dependent on a number of key suppliers. Loss of or damage to our relationships with these suppliers could have a material adverse effect on our business, financial condition, results of operations or cash flows.

To manufacture our various products, we use many raw materials, including steel, zinc, lead, brass, copper, plastics and wood, as well as manufactured parts purchased from independent manufacturers. An extended interruption in the supply of these or other raw materials or in the supply of suitable substitute materials would disrupt our operations, which could have a material adverse effect on our business, financial condition and results of operations. Furthermore, we may incur additional costs in sourcing raw materials from alternative producers.

For a number of our raw materials, we rely on just a few suppliers and, in some instances, we have sole supplier relationships. Alternative sources, many of which are foreign, exist for each of these materials. We do not, however, currently have significant supply relationships with any of these alternative sources and, therefore the materials may be more expensive. We cannot estimate with any certainty the length of time that would be required to establish alternative supply relationships, or whether the quantity or quality of materials that could be so obtained would be sufficient.

In addition, we rely on a limited number of vendors to perform machining processes on key rifle components. Any disruption of the operations of one of our key vendors could materially impact our ability to obtain certain rifle components. In the event that we lose one of our principal vendors, we may not be able to find an alternative vendor in a timely manner, and as a result, our ability to produce rifles could be materially and adversely affected.

We may not be able to compete successfully within our highly competitive markets, which could adversely affect our business, financial condition, results of operations or cash flows.

The markets in which we operate are highly competitive. Product image, performance, quality, price and innovation are the primary competitive factors in the firearms industry. Product differentiation exists to a much lesser extent in the ammunition industry, where price is the primary competitive factor. Reductions in price by our competitors in the ammunition industry could cause us to reduce prices or otherwise alter terms of sale as a competitive measure, which could adversely affect our business, financial condition, results of operations or cash flows.

Our competitors vary by product line. Some of our competitors are subsidiaries of large corporations with substantially greater financial resources than us. Although we believe that we compete effectively with all of our present competitors, we may not continue to do so, and our ability to compete could be adversely affected by our significant amount of debt. See "I.—Business—Competition."

Acquisition protocol and contract negotiations with government, law enforcement and military channels could result in increased volatility and uncertainty to the timing of our sales revenues.

Government, law enforcement and military sales channels are typically in the form of contractual arrangements pursuant to Federal Acquisition Regulations (FAR)/Defense Federal Acquisition Regulation Supplement (DFARS), laws of international military buyers, or law enforcement distributor agreements. We sell certain firearms, accessories, and ammunition products to these channels. A percentage of our sales revenues could therefore be subject to customer acquisition protocol and contract negotiations. This could cause sales revenue from these channels to be increasingly volatile and uncertain with respect to the timing of orders and may have an impact on delivery schedules.

For instance, we are subject to business risks specific to companies engaged in supplying defense-related equipment and services to the U.S. government and other governments. Our contracts with the U.S. government may be indefinite delivery, indefinite quantity ("IDIQ") contracts under which the customer places orders at its discretion. Although these contracts generally have a three to five year term, they are funded only when orders are placed and, as a result, sales to the U.S. government could vary significantly from year to year. Although our agreements with foreign governments typically include firm quantities and delivery schedules, foreign governments generally have the ability to terminate for convenience, and they also generally have standard acquisition protocols

2. PROPERTIES

We are headquartered in Madison, North Carolina in a 43,000 square foot facility that we own and an 19,700 square foot facility that we lease. These facilities are utilized for management offices as well as certain sales, marketing, human resources, information technology, finance, treasury, and customer and consumer service functions. We believe that these facilities are appropriately utilized and suitable for the activities conducted therein and are included with our All Other category.

The following table sets forth selected information regarding our principal manufacturing and ancillary facilities:

Location	Nature	Segment	Ownership
Manufacturing Facilities:			
Ilion, New York	Shotgun, rifle, and pistol manufacturing	Firearms	Owned
Lonoke, Arkansas	Ammunition manufacturing	Ammunition	Owned
Huntsville, Alabama	Firearm and component manufacturing	Firearms	Owned
Lexington, Missouri	Firearm component manufacturing	Firearms	Leased
Mayfield, Kentucky	Rifle manufacturing	Firearms	Owned
Sturgis, South Dakota	Rifle manufacturing	Firearms	Leased
Pineville, North Carolina	Pistol manufacturing	Firearms	Leased
St. Cloud, Minnesota	Rifle assembly	Firearms	Leased
Lawrenceville, Georgia	Firearm accessory manufacturing	All Other	Leased
Mona, Utah	Ammunition manufacturing	Ammunition	Leased
Lenoir City, Tennessee	Firearm component manufacturing	Firearms	Owned
Ancillary Facilities:			
Kennesaw, Georgia	Firearm accessory warehouse and distribution	All Other	Leased
Memphis, Tennessee	Warehouse and distribution	All Other	Leased
Charlotte, North Carolina	Office	All Other	Leased
Nashville, Tennessee	Office	All Other	Leased
Stamford, Connecticut	Office	All Other	Leased
Elizabethtown, Kentucky	Research and development	All Other	Owned
Colchester, Essex, UK	Office and warehouse	Firearms	Leased

We believe that the above facilities that we are currently utilizing are suitable for the manufacturing conducted therein and have capacities appropriate to meet existing production requirements. The Ilion, Lonoke, Mayfield, Mona and Huntsville facilities each contain enclosed ranges for firearms and ammunition testing.

Creditors under the Term Loan B have a first-priority lien against the real property we own as identified in the chart above and in our Madison, North Carolina headquarters.

[1] During 2013, the Company recognized a $0.6 impairment charge related to the building and real property held for sale in North Haven, Connecticut. The facility was sold in November 2013 for $1.6 and was classified as held for sale since December 2010 when its initial fair value was estimated to be $3.5. In 2011, the Company estimated the idle facility's fair value was $2.2 after it was decided that the facility's best and highest use would be in commercial development. Its fair value was estimated using recent transaction prices from the local commercial real estate market as its unobservable inputs.

Fair Values of Other Financial Instruments

Fair value measurements, hierarchy levels, valuation techniques, and unobservable input disclosures for the Company's pension plans' assets are disclosed in note 13. Although the Company makes contributions to its pension plans, it does not maintain control of the plans' assets as each plan is its own reporting entity. However, actual returns on the plans' assets have a direct effect on the Company's net periodic benefit cost and recognized amounts on its consolidated balance sheet.

Due to their liquid nature, the carrying values of cash and cash equivalents, accounts receivable, accounts payable, and other accrued liabilities are considered representative of their fair values. The estimated fair value of the Company's debt was $813.2 and $839.9 as of December 31, 2014 and 2013, respectively. The carrying value of the Company's debt was $836.3 and $823.5 as of December 31, 2014 and 2013, respectively. The fair value of the Company's fixed rate notes was measured using the active quoted trading price of its notes at December 31, 2014 and 2013, which are considered Level 2 inputs.

As a result of the restructuring activities that are discussed in note 19, the Company recognized a $2.0 liability for prematurely terminated operating leases on properties that have ceased operations. The liability represents the fair value of the leases' termination costs and was computed using the present value of the remaining rental payments, reduced by estimated sublease receipts that are reasonably expected for each property. Estimated sublease receipts are required to be used in the fair value determination even if the Company's intent to sublease the properties is nonexistent. Inputs such as price per square foot and length of lease terms on local properties used in a similar manner as the Company's vacated facilities were used to estimate sublease receipts. The discount rate used to determine the liability's fair value is commensurate with the Company's incremental borrowing rate. Since they are based on unobservable market data, the assumptions used in the liability's calculation are considered to be Level 3 inputs.

15. Related Party Transactions

The Company paid Meritage Capital Advisors, LLC ("Meritage") fees totaling $4.6, $0.6, and $5.6 in 2014, 2013, and 2012, respectively, in connection with transaction advisory services, including the issuance of the Company's 2020 Notes in 2012. A member of the Remington Outdoor Board is a managing director of Meritage.

The Company paid Cerberus Operations and Advisory Company, LLC, an affiliate of Cerberus Capital Management, L.P. ("Cerberus"), fees totaling $1.0, $1.8, and $3.9 in 2014, 2013, and 2012, respectively, for consulting services provided in connection with improving operations, as well as approximately $2.0 in 2012 in management fees for advice and support concerning overall strategic planning, business development, financial structuring activities, and general corporate activities. The Company also paid Cerberus $27.9 in 2012 for the redemption of preferred stock.

The Company purchased certain products totaling approximately $3.2, $9.8 and $3.3 from other entities affiliated through common ownership in 2014, 2013, and 2012, respectively.

The Company paid approximately $0.5, $0.4, and $0.5 in 2014, 2013, and 2012, respectively in connection with certain operating leases to an entity where the owner is an employee of the Company.

EXHIBIT C

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
CIVIL DIVISION

BRYAN NORBERG and
GRAHAM KUNISCH,

Plaintiffs,

CITY OF MILWAUKEE,

Involuntary Plaintiffs,

Case No. 10CV020655

vs.

BADGER GUNS, INC., et al

Defendants.

DEFENDANTS' REPLY TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Exception (iii) should not be singled out as a "super exception" for the additional reason that the structure of §7903(5)(A) precludes such an interpretation. *See State ex rel Kalal v. Circuit Court of Dane County*, 271 Wis. 2d 633, 663 (2004)("Context is important to meaning. So, too, is the structure of the statute in which the operative language appears."). Section 7903(5)(A) begins with a non-indented operative definition of a "qualified civil liability action" and is followed by six identically indented descriptions of "actions", which the operative definition "shall not include." If Congress intended for the third described "action" to be a broader limitation on a "qualified civil liability action" than the other five described actions, the six exceptions would not have been placed in a commonly formatted series culminating in the disjunctive "or". Logically, if exception (iii) was intended to be the broadest limitation on the operative definition to which all others are subordinate, the language of exception (iii) would have been stated first, immediately after the operative definition, with the other five more narrow exceptions following thereafter in numbered sequence.

(C) The Legislative History of the PLCAA Is Not Helpful in Resolving Any Perceived Ambiguity in the Statutory Language.

Wisconsin courts are to use an "interpretive method' of statutory interpretation that "focuses on textual, intrinsic sources of statutory meaning and cabins the use of extrinsic sources of legislative intent." *State ex rel Kalal*, 271 Wis. 2d at 667. The interpretive method "is grounded in more than a mistrust of legislative history or cynicism about the capacity of the legislative or judicial processes to be manipulated." *Id.* It is fundamental rule to the rule of law:

> Ours is a government of laws not men, and it is incompatible with democratic government, or indeed, even with fair government, to have the meaning of a law determined by what the lawgiver meant, rather than what the lawgiver promulgated. (internal citation omitted) It is the law that governs, not the intent of the lawgiver.

Id. Legislative history is not to be consulted "except to resolve an ambiguity in statutory language and "sometimes" to "verify a plain meaning interpretation." *Id.* at 666-67 citing *Seider v. O'Connell*, 236 Wis. 2d 211, 236 (2000).

Plaintiffs selectively cite to statements made on the floor of the Senate during debate on passage of the PLCAA as evidence that Congress did not intend to exempt gun sellers from ordinary negligence claims. (Br. of Pltfs., p. 28). The statements cited by Plaintiffs broadly address what some congressmen believed the impact the PLCAA would have on lawsuits against gun sellers. The statements do not shed light on the meaning of ambiguous language or support a plain meaning interpretation of statutory language. Consideration of these statements on the question of statutory meaning is improper.

Regardless, statements made by individual members of Congress have no value in interpreting the intent of Congress as a whole. *Medical Center Pharmacy v. Mukassey*, 536 F.3d 383 (5th Cir. 2008); *See also Chrysler Corporation v. Brown*, 441 U.S. 281, 311 (1979)("The remarks of a single legislator, even the sponsor, are not controlling in analyzing legislative history."). The reason is obvious: there are 535 members of Congress, and there may be that many different views of what a bill will accomplish following enactment. "'Cherry-picking' favorable snippets of legislative history to establish the meaning of subsequently enacted legislation is an enterprise rife with the potential for mischief and abuse." *In re Visteon Corporation*, 612 F.3d 210, 228 (3rd Cir. 2010). Moreover, the in the course of floor debate "the choice of words...is not always accurate or exact. *In re Carlson*, 292 F.Supp. 778, 783 (C.D. Cal. 1968). Ultimately, it is only the statute and its language that emerges from Congress as law. *See State ex rel Kalal*, 271 Wis. 2d at 667 ("It is the law that governs, not the intent of the lawgiver ... Men may intend what they will; but it is only the laws that they enact which bind us.").

Plaintiffs are plainly guilty of cherry-picking. They have selected a handful of comments made during the Senate floor debate by congressman advocating the bill's passage, who sought to assuage the full body that the sky was not falling. Others took the opposite view. For example:

> This legislation we are debating today would wipe away their rights to make a negligence claim. [7]

> This legislation generally bars all suits involving negligence and restricts the exemption to some categories of specific violations of Federal law, which arguably, in your hypothetical, it would not reach. The only exception, to be fair to the legislation, that might allow someone to go to court under the concept of negligent entrustment, which as drafted in the legislation, would say you have to have a suspect, know that person would use the weapon illegally, and that person has to use the weapon. [8]

> This bill does allow some cases to move forward, as its supporters have pointed out, but these cases can proceed only in the narrowest of circumstances.[9]

> This bill goes way beyond strict liability. It says that simple negligence is out the door .... [10]

These statements and others demonstrate the futility of looking to the Senate floor debates for evidence of what Congress as a whole sought to accomplish through the PLCAA.

This Court should follow the lead of other courts across the country and dismiss Plaintiffs' ordinary negligence claim for the simple reason that ordinary negligence is not found in the enumerated exceptions to a "qualified civil liability action."

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7 151 Cong. Rec. S9092 (July 27, 2005)(Sen. Reed).

8 151 Cong. Rec. S9236 (July 28, 2005)(Sen. Reed). In fact, this Senator offered an amendment to the bill with the "overarching purpose, to preserve the right of an individual to sue for negligence when they have been harmed when that negligence can be fairly attributed to a gun manufacturer, gun dealer, or gun trade association." 151 Cong. Rec. S9374 (July 29, 2005)

9 151 Cong. Rec. S9070 (July 27, 2005)(Sen. Feinstein).

10 151 Cong. Rec. S9085 (July 27, 2005)(Sen. Reed).

using the available tools of statutory interpretation, can rely on the ample precedent upholding the constitutionality of the PLCAA, expend little effort soundly rejecting those arguments and uphold its constitutionality for the same reasons. [19]

XI. CONCLUSION

For the foregoing reasons, Defendants request that summary judgment be entered in their favor and against the Plaintiffs.

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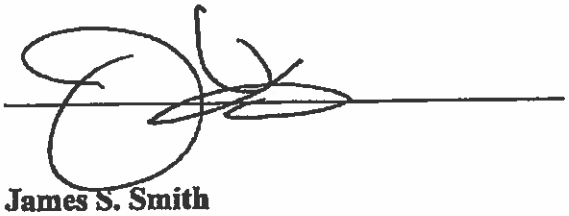

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[19] Defendants adopt and incorporate by reference the arguments made by the United States in support of the constitutionality of the PLCAA set forth in its Brief in Support of the Constitutionality of the Protection of Lawful Commerce in Arms Act, dated October 1, 2013.